No. 9790.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

GEORGE T. GOGGIN, Trustee in Bankruptcy of the Estate of Jack Dave Sterling, Bankrupt,

Appellant,

vs.

BOLSA CHICA OIL CORPORATION, a corporation, THOS. W. SIMMONS, ALLAN A. ANDERSON, WILLIAM H. CREE, H. H. McVICAR, C. M. ROOD, and M. M. McCALLEN CORPORATION, a corporation,

Appellees.

Appellant's Reply to Brief of Appellees Bolsa Chica Oil Corporation, Thos. W. Simmons and Allan A. Anderson and the Supplementary Brief of Appellees William H. Cree, H. H. McVicar, C. M. Rood and M. M. McCallen Corporation.

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PRELIMINARY STATEMENT.

In view of the fact that the appellees William H. Cree, H. H. McVicar, C. M. Rood and M. M. McCallen Corporation, in their supplementary brief have adopted by reference the contents of the brief of appellees Bolsa Chica

Oil Corporation, Thos. W. Simmons and Allan A. Anderson, we shall devote the larger portion of this brief to replying to the brief of the latter appellees, and shall devote attention to the additional arguments of the supplementary brief after first disposing of the brief of the appellees Bolsa Chica Oil Corporation, *et al.*

STATEMENT OF THE HISTORY OF THE CASE.

We note first that appellees have taken issue with certain matters contained in the statement of the history of the case contained in our opening brief. It will be noted that the statement contained in appellant's history of the case is borrowed from the certificate of contempt of the Referee. [Tr. 53 to 72.] This certificate of contempt of the Referee contains the only findings of fact ever made by the only tribunal that ever heard evidence. The hearing before the Honorable Leon R. Yankwich, District Judge, was one in which the District Court heard no evidence whatsoever and refused to receive any evidence. [Tr. 83 to 85.] Until the District Court hears the evidence, or until some direct review is taken from the findings of the Referee, the findings of fact of the Referee must be deemed to be presumptively correct. *General Order No. 47.*

Remington, Vol. 7, Sec. 3034, page 131;
Remington, Vol. 7, Sec. 3035, page 132.

ARGUMENT.

The Bankruptcy Court Was Fully Empowered to Issue the Injunctive Order Which Is the Basis of the Contempt Proceeding Herein Involved.

Appellees' first argument is directed to the contention that the bankruptcy court had no jurisdiction to make the order of injunction which was violated by appellees and gave rise to the contempt proceeding. Appellees contend that the injunction was beyond the power of the bankruptcy court. Yet appellees in searching for the jurisdictional powers of the bankruptcy court appear to have hunted every place but the one wherein the powers of the bankruptcy court are specifically enumerated, to-wit, the Bankruptcy Act. Appellees' brief fails even to mention Section 2a (15) of the Bankruptcy Act of 1938, which we cited again and again in our opening brief. This is a significant silence in the light of the fact that Section 2a (15) unequivocally vests the bankruptcy court with all of the jurisdiction necessary to sustain the injunctive order in this case.

The Bankruptcy Act provides, as follows:

> "§2a. Courts; Jurisdiction and Powers.—The courts of bankruptcy as defined in the previous chapter, namely, the district courts of the United States in the several states, the Supreme Court of the District of Columbia, the district courts of the several territories and possessions to which this title is, or may after July 1, 1898 be, applicable, and the United States court in the district of Alaska, are hereby made

courts of bankruptcy, and are hereby invested, within their respective territorial limits as established on July 1, 1898, or as they may be thereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they were on July 1, 1898 or may be thereafter held, * * * (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this title; * * *."

It is well established that this section vests the bankruptcy court with the power to enjoin or restrain the actions of any stranger who threatens to injure the property of the bankrupt estate. *Collier on Bankruptcy,* 14th Edition, Vol. 1 Sections 261 and 265.

In the Matter of Baldwin, 291 U. S. 610;

Steelman v. All Continent Corp., 301 U. S. 172, 57 S. Ct. 705, 81 L. Ed. 1085;

Morehouse v. Giant Powder Company, 206 Fed. 24.

These and other cases cited in our opening brief remain unanswered by appellees.

Appellees contend that the bankruptcy court acted in excess of its jurisdiction. To enjoin too much would not deprive the court of its jurisdiction—and failure to appeal on the extent of the injunction renders the injunction final and binding. Thus the United States Supreme Court in *Swift & Co. v. United States,* 276 U. S. 311 (326), 72 L. Ed. 587, 48 S. Ct. 311, held that:

"The power to enjoin includes the power to enjoin too much."

Appellees' arguments on lack of jurisdiction lack conviction unless appellees can show that Section 2a (15) of the Bankruptcy Act of 1938, is either void, unconstitutional or non-existent. Congress vested the bankruptcy court with the jurisdiction to restrain any interference with its administration of estates for the very good and obvious reason that without such authority the ends and purposes of bankruptcy administration could be defeated by outside interference. All of the cases passing upon the right of the court to enjoin interference even from strangers recite that even without the effect of Section 2a (15), the bankruptcy court would nevertheless be vested with the necessary jurisdiction to prevent interference, such jurisdiction always being inherent in a court of equity. A court of bankruptcy is a court of equity. *Continental Ill. Nat. Bank, etc. v. Chicago, Rock Island, etc. Ry. Co.*, 294 U. S. 648, 79 L. Ed. 1110, 55 Sup. Ct. 595.

Appellees contend that the injunction in this case was issued on "mere apprehension of injury". Appellees contend that at the time the injunction was issued "no injury was threatened, no invasion of appellant's property was imminent." We take issue with these broad statements which are unsupported by the record. The record reveals that appellee Bolsa Chica Oil Corporation was familiar with the damage done to appellant's well by the "Termo Well", which was occasioned by the use of mud. [Tr. 55, 56.] Testimony before the Referee showed that if mud was used, mud would be carried through the oil sands into appellant's well and would irreparably injure and damage said well. [Tr. 57.] As a result of the violation of the injunction by appellees, the use of mud in violation of such injunction, caused a column of mud to be raised in

the bottom of appellant's well and stopped production of said well. [Tr. 60.] The evidence further reflected that the violation of the injunction through the use of mud reduced the production of appellant's well from 260 barrels of oil per day to 160 barrels of oil per day. [Tr. 61.] And yet appellees unblushingly state "no injury was threatened, no invasion of appellant's property was imminent."

Again and again appellees reiterate that they were making but a lawful use of their own property and that the bankruptcy court had no authority to interfere. Page 120 of appellees' brief cites a number of inapplicable cases to support appellees' contention that they had the right to use their own property lawfully without interference from the bankruptcy court. Counsel for appellees have lost sight of the well-established doctrine, *sic utere tuo ut alienum non laedas,* which provides that it is unlawful for one to so use his property as to cause injury to another. This doctrine of liability even without negligence or fault was first announced in the famous case of *Ryland v. Fletcher,* L. R. 3, H. L. 330, and has been and is being followed by the California courts.

In *Green v. General Petroleum Corp.* (1928), 205 Cal. 328, 270 Pac. 952, 60 A. L. R. 475, defendant was held absolutely liable for damage done by an oil well "blow-out" covering plaintiff's property with oil, sand, mud, rocks, etc., despite the fact that defendant had exercise the utmost care. It was said:

> "Appellant contends that it was absolved from all liability for the damages to respondents' property under the finding of the trial court that it had exer-

cised due care and caution in its drilling operations. Respondents rely upon the application of the doctrine, *sic utere tuo ut alienum non laedas,* to the facts in the case. * * *

"The discovery and production of oil is a legitimate and lawful business, and when properly carried on and maintained, is not a nuisance *per se.* Under normal conditions, the drilling operations cause no invasion of the adjacent lands. The fact, therefore, that the well of appellant was properly put down and carefully cared for, appellant contends, eliminates the only factor in the case which would justify a judgment for respondents in the absence of negligence. We do not think so. The present care does not arise from either the conduct of a nuisance *per se,* or from an inevitable calamity or act of God, but presents a situation to which the doctrine of *sic utere tuo ut alienum non laedas* may be applied in its broad and fundamental import. The ancient maxim of jurisprudence is incorporated, in substance, in the statutory law of this state. The Civil Code provides (Sec. 3514): 'One must so use his own rights as not to infringe upon the rights of another.' Where one, in the conduct and maintenance of an enterprise lawful and proper in itself, deliberately does an act under known conditions, and, with knowledge that injury may result to another, proceeds, and injury is done to the other as the direct and proximate consequence of the act, however carefully done, the one who does the act and causes the injury should, in all fairness, be required to compensate the other for the damage done. The instant case offers a most excellent example of *an actual invasion* of the property of one person through the act of another."

See also the following cases which support and supplement *Green v. General Petroleum, supra:*

Nolla v. Orlando (1932), 119 Cal. App. 518, 6 Pac. (2d) 984;

Kall v. Carruthers, 59 Cal. App. 555, 211 Pac. 43 (1922);

McGrath v. Basich Bros. Const. Co., 7 Cal. App. (2d) 573, 46 Pac. (2d) 981 (1935).

Neither *Beauchamp v. United States,* 76 Fed. (2d) 663; or *American Bank & Trust Co. v. Federal Reserve Bank of Atlanta,* 67 L. Ed. 1153, 262 U. S. 643, cited by appellees are pertinent to the issues. Neither of these cases involve any interference with the property in the custody of the bankruptcy court other than that of normal competition. Neither involved threats of trespass. In the instant case appellee Bolsa Chica Oil Corporation had threatened to use a means of procedure in the drilling of its well which threatened physical injury to appellant's well. It is as much a trespass for appellee to make an underground invasion of appellant's property as it would be a trespass if such invasion were on the surface.

E. A. Bell v. Bell View Oil Syndicate, 24 Cal. App. (2d) 587, 76 Pac. (2d) 167;

Union Oil Company v. Mutual Oil Company, 19 Cal. App. (2d) 409, 65 Pac. (2d) 896.

The California court has held that it will enjoin subterranean trespass.

Union Oil Co. v. Reconstruction Oil Co., 20 Cal. App. (2d) 170, 66 Pac. (2d) 1215;

Union Oil Co. v. Domengeaux, 30 Cal. App. (2d) 266, 86 Pac. (2d) 127.

We find it difficult to comprehend appellees' impassioned plea for sympathy on page 10 of its brief, in which appellees submit "that a monstrous wrong was done to appellee; private rights were ruthlessly invaded and the referee in bankruptcy exceeded his power in granting such an injunction." It ill becomes appellees to complain of a "monstrous wrong" and a "ruthless invasion" in view of the fact that this so-called "monstrous wrong" and "ruthless invasion" came by express invitation from appellees themselves. It will be noted from the record that in the proceeding before the Referee, Mr. Warren S. Pallette, then and now counsel for appellees suddenly was inspired to end the proceedings by suggesting the injunction by stipulation. [Tr. 152 ff.] Accordingly, appellees present copious tears appear synthetically produced since nothing was contained in the order of injunction which was not suggested by appellees themselves and agreed to by appellees themselves. The only "monstrous wrong" that we are able to perceive is the contemptuous violation of the court's injunction and the contemptuous withdrawals by appellees of the word and integrity in which they agreed to the injunctive order. The only "ruthless invasion of private rights" that we perceive is the damage done by appellees to appellant's well despite the court's injunction and despite the knowledge that such action would result in irreparable damage and injury to appellant.

Appellees complain further that the referee lacked jurisdiction to issue the order of injunction because such order

of injunction was secured in a summary proceeding. The cases cited by appellees are all turnover cases against adverse claimants who did not consent to the proceedings against them. The facts of the instant case are distinguishable from the cited cases in that the referee in the instant case acted by injunction to prevent threatened trespass and injury to property within the custody of the court. As we have heretofore pointed out (and which has been entirely ignored by appellees) Section 2a(15) of the Bankruptcy Act of 1938, as well as the general powers adherent in a court of equity, furnish the authority upon which the bankruptcy court can and must act to protect the property in *custodia legis*. The instant case is not an adverse claimant case. It is truly a trespass case and is dissimilar from the adverse claimant cases in that in the latter the property involved is not in the possession of the court and the adverse claimant refuses to submit himself to the jurisdiction of the court. In the instant case the Referee in Bankruptcy acted to prevent appellees from going upon the property which was in the custody of the bankruptcy court and injuring the same. It is fundamental that the trespass by a subterranean invasion is as much a trespass as any other, and the cases are legion that have granted injunctive process to prevent subsurface trespass.

The District Court Erred in Permitting a Collateral Attack Made Upon the Injunctive Order, the Violation of Which Was the Basis for the Contempt Proceeding.

Appellees insist that the attack upon the jurisdiction of the Referee made before the District Court is a direct rather than a collateral attack. They argue further that the case of *Stoll v. Gottlieb,* 305 U. S. 165, 83 L. Ed. 104, 59 S. Ct. 134, is applicable only to cases involving collateral rather than direct attacks upon jurisdiction of the court. Appellees reach this conclusion by citing from the opinion in *Stoll v. Gottlieb,* wherein the Supreme Court distinguishes the *Stoll* case from that of *Vallely v. Northern F. & M. Ins. Co.,* 254 U. S. 348, 65 L. Ed. 297, 41 S. Ct. 116. The Supreme Court held that the *Vallely* case "is inapplicable here because there was not an actually contested issue and order as to jurisdiction. The case is also distinguishable because the motion to vacate was made in the same bankruptcy proceeding as the order". Appellees thereupon argue that this latter distinction constitutes dicta to the effect that the decision in the *Vallely* case is justified because the attack upon the jurisdiction of the court was made in the same bankruptcy proceeding as the order involved. The language of the United States Supreme Court, however, does not permit the drawing of such an inference because immediately following the sentence heretofore quoted, the court said: "We do not comment upon the significance of this variable." Fairness would have required of appellees not to have omitted this important qualification to the quotation recited by appellees on page 31 of their brief. The United States Supreme Court definitely refused to comment upon the significance of the variance in facts, thus leaving the question open for future considera-

tion. Further decisions do provide us with the answer of the United States Supreme Court on this point. No less than two Supreme Court decisions subsequent to *Stoll v. Gottlieb* have involved attacks made in the *same proceeding* in which the order involved had been made. One of these, *Robert H. Jackson, Atty. Gen. of U. S. v. Irving Trust Co., et al.,* 85 L. Ed. (Adv. Op.) 310, was cited in our opening brief and was referred to by appellees in their answer (Appellees' brief p. 29) and referred to by them merely as an exception to the rule. The other case is that of *Sampsell v. Imperial Paper & Color Corp.,* 85 L. Ed. (Adv. Op.) 797, which was cited in our opening brief and which received no answer whatsoever from appellees. This latter case was a bankruptcy case and the jurisdictional attack upon the order of the bankruptcy court came *within the same bankruptcy proceeding,* and after time to review or appeal had expired. The United States Supreme Court refers to this attack as a *collateral attack* and not as a direct attack. The court says:

> "Furthermore, there was no appeal from the order entered in the summary proceedings. It therefore could not be collaterally attacked in the proceedings by which respondent sought priority for its claim."

Ex parte Sawyer, 124 U. S. 200, 31 L. Ed. 402, 8 S. Ct. 482; *Ex parte Fisk,* 113 U. S. 713, 28 L.Ed. 1117, 5 S. Ct. 724; as well as other cases cited by appellees must be considered in the light of the subsequent cases of the United States Supreme Court, such as *Stoll v. Gottlieb, supra; Chicot County Drainage Dist. v. Baxter State Bank,* 308 U. S. 371, 60 S. Ct. 317, 84 L. Ed. 329 (rehearing denied, 309 U. S. 695, 60 S. Ct. 581, 84 L. Ed. 1035); *Treinies v. Sunshine Mining Co.,* 308 U. S. 66; *Sunshine Anthracite*

Coal Co. v. Adkins, 310 U. S. 381, 84 L. Ed. 1263, 60 S. Ct. 907, 84 L. Ed. 1276; *Robert Jackson v. Irving Trust Co., et al., supra;* and *Sampsell v. Imperial Paper & Color Corp., supra.* The *Ex parte Sawyer* case was not without the vigorous dissenting opinions of Mr. Chief Justice Waite and Mr. Justice Harlan which pointed the way to the majority opinion in *Stoll v. Gottlieb* and subsequent cases.

Appellees' contention that an attack upon the jurisdiction of the court in making an original order from which a contempt proceeding arises is a direct rather than a collateral attack, not only is made by appellees without support of any authority, but comes in the face of direct contradiction of express authority. No less than the United States Supreme Court, in the case of *Oriel v. Russell, et al.,* 278 U. S. 358, 73 L. Ed. 419, 49 S. Ct. 173, holds that a turnover order cannot be collaterally attacked on a motion for commitment for contempt. In this case the contempt proceeding took place in the *same* bankruptcy proceeding wherein the turnover order was made. The time for appeal having expired, the attack upon such order was not a direct one but a collateral one. The late Chief Justice Taft, in writing the opinion of the court, said:

> "The referee and the court, in passing on the issue under such a turnover motion, should, therefore, require clear evidence of the justice of such an order before it is made. Being made, it should be given weight in the future proceedings as one that may not be *collaterally attacked* by an effort to try over the issue already held and decided at the turnover. Thereafter on the motion for commitment the only evidence that can be considered is the evidence of something that has

> happened since the turnover order was made showing that since that time there has newly arisen an inability on the part of the bankrupt to comply with the turnover order." (Italics ours.)

We are cognizant of the fact that the case of *Beauchamp v. U. S., supra,* cited by appellees, appears to permit an attack upon the jurisdiction of the court to issue the order the violation of which is the basis of the contempt proceedings at any time including the contempt proceeding.

The *Beauchamp* case was decided by this Honorable Court before *Stoll v. Gottlieb* and before the United States Supreme Court had definitely determined the sanctity of the court's own determination as to its own jurisdiction. The *Beauchamp* case can now be reconciled on the special concurring opinion of Circuit Justice Wilbur, who pointed out that the contempt proceeding itself was defective because the allegations were insufficient to tie up the alleged contemnor with the violation of the injunction. Judge Wilbur agreed that the injunction had been erroneously granted by the referee but declared that it was too late to raise such a defense. His Honor said:

> "I also agree that the injunction was erroneously granted, but such error is not a defense to a charge of contempt for violating the order. The remedy is by an appeal from the order granting the injunction. The court issuing the injunction had jurisdiction over the parties enjoined and over the subject enjoined and over the subject matter and the order was not void."

We believe that the law has been very ably set forth in a recent decision of the Circuit Court of Appeals for the Second Circuit, in the case of *U. S. v. Jaeger,* 117 Fed. (2d) 483. In this decision (opinion by Justice Clark) the court said:

> "Nevertheless it appears on the authorities that, however harsh may be the result as to the relator herein, that issue is not open to collateral attack. What we have said indicates that in an appropriate case the bankruptcy court could have made the order in question. It is now well settled that on contempt proceedings no attack can be made on the regularity, correctness, or validity of the original order. *Oriel v. Russell,* 278 U. S. 358, 49 S. Ct. 173, 73 L. Ed. 419, affirming *In re Oriel,* 2 Cir., 23 F. 2nd 409, 413; *In re Siegler,* 2 Cir., 31 F. 2nd 972; *In re Arctic Leather Garment Co., supra; Id.,* 2 Cir., 106 F. 2nd 99; cases collected 3 Moore's Collier on Bankruptcy, 14th Ed., 535-537. A like rule applies to *habeas corpus* proceedings; they cannot be used to review, as on appeal, the court action which has led to the commitment order. *Craig v. Hecht,* 263 U. S. 255, 44 S. Ct. 103, 68 L. Ed. 293, affirming *Ex parte Craig,* 2 Cir., 282 F. 138; *Ex parte Kearney,* 7 Wheat. 38, 20 U. S. 38, 5 L. Ed. 391; *United States ex rel. Paleais v. Moore,* 2 Cir., 294 F. 852.
>
> Relator has appealed from neither the commitment nor the contempt order; he therefore can raise here the issue of jurisdiction only. Yet he had opportunity to and did raise that issue in the prior proceedings,

and the court found against him. Even if we assume that the court was acting upon erroneous grounds as indicated above, yet *Stoll v. Gottlieb,* 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 104, makes it clear that the matter is settled against *collateral attack.* There the issue whether or not the bankruptcy court could release a guarantor in reorganization from his guaranty was decided by the Court in favor of its jurisdiction. Yet the Supreme Court holds that, even if that ruling be erroneous, and the matter without the power of a bankruptcy court (*In re Diversey Bldg. Corp.,* 7 Cir., 86 F. 2nd 456; *In re Nine North Church Street, Inc.,* 2 Cir., 82 F. 2nd 186), the issue cannot be raised collaterally. The situation seems the same as that here presented. Later decisions of the Court reiterate and reinforce this conclusion. *Jackson v. Irving Trust Co.,* Jan. 6, 1941, 61 S. Ct. 326, 85 L. Ed. .....; *Chicot County Drainage Dist. v. Baxter State Bank,* 308 U. S. 371, 378, 60 S. Ct. 317, 84 L. Ed. 329; cf. 40 Col. L. Rev. 1006, 1008; 53 Harv. L. Rev. 652, 659; 49 Yale L. J. 959; and see also *Ripperger v. A. C. Allyn & Co.,* 2 Cir., 113 F. 2nd 332, certiorari denied 61 S. Ct. 136, 85 L. Ed. .....; *Commercial Cable Staffs' Assn. v. Lehman,* 2 Cir., 107 F. 2nd 917, 921."

In the light of this case it is obvious that the jurisdictional question having been raised by appellees before the referee, the contempt proceeding is a subsequent proceeding and a collateral attack on the jurisdictional question can no longer be heard.

The Stipulation to the Entry of the Order of Injunction Was a Consent to the Jurisdiction of the Court.

Appellees argue that the stipulation to the entry of the order of injunction is not grounds for holding the District Court in error for permitting an attack upon the jurisdiction of the court and dismissing the contempt proceedings. Appellees argue that the stipulation was made with the reservation of objection to the jurisdiction of the court. In our opening brief, we pointed out by authorities which have not been refuted by appellees that the stipulation to a judgment is a consent to jurisdiction. Once one has submitted himself to the jurisdiction of the court, it is impossible to retract that consent. In the proceeding which led up to the injunction, the proceedings were terminated because of the voluntary consent, in fact proposal by appellees, that an injunction be stipulated to. Thus, appellees submitted themselves to the jurisdiction of the court. The subsequent attempt to reserve the question of jurisdiction was ineffectual. If a party litigant

> "takes any step consistent with the hypothesis that the court has jurisdiction of the cause and the person, the special appearance is thereby converted into a general appearance irrespective of whether or not it is by its terms limited to a special purpose, *and an attempted reservation of the special appearance and rights thereunder is wholly ineffectual.* * * *" (Italics ours.)
>
> 6 *Cor. Jur.* §1, (c), p. 9.

> "An offer to confess judgment constitutes a general appearance and waives objection to jurisdiction of the person."
>
> *Feldman Investment Co. v. Connecticut, etc.*, 78 Fed. (2d) 838.

In addition to the authorities cited in our opening brief, a recent California decision illustrates the sanctity with which the courts regard stipulations in open court. In *Cathcart v. Gregory,* 45 A. C. A. 252, at page 259, the court said:

> "In *Webster v. Webster, supra* (216 Cal. 485, 14 P. (2d) 522) the Supreme Court said: 'Such a stipulation made in open court constitutes "not only an agreement between the parties but also between them and the court, which the latter is bound to enforce, not only for the benefit of those interested, but for the protection of its own honor and dignity." ' "

Reply to Supplementary Brief of Appellees William H. Cree, H. H. McVicar, C. M. Rood and M. M. McCallen Corporation.

The additional argument of appellees Cree, McVicar, Rood and McCallen Corporation in their supplementary brief can be summarized as follows:

That the injunction was against the Bolsa Chica Oil Corporation, its servants, agents and employees only, and that as vendees of the Bolsa Chica Oil Corporation, these appellees are not subject to the injunction and therefore are not in contempt in violating the same. The theory upon which these appellees were brought into the picture was that they, with full knowledge of the injunction, aided and abetted in its violation. One who is not named or referred to in an injunction may nevertheless be guilty of contempt for its violation when such party conspires with others or aids or abets others in violating such injunction. 12 Am. Jur. sec. 26, page 407.

Where an injunction operates *in rem* against specific property or against an illegal use of such property, the

decree is a limitation upon the use of the property, of which all subsequent owners, lessees or occupants must take notice. 12 Am. Jur. sec. 27, page 409.

Any interference with property in the custody of the law whether there had been an injunction or not, constitutes contempt. 12 Am. Jur. sec. 22, page 404.

Of particular significance is the admission in the brief of appellees Bolsa Chica Oil Corporation *et al.,* on page 6, that the well was sold to the McCallen Corporation "rather than violate the injunction". This is not the proper occasion to go into a discussion of the facts. Appellees Cree *et al.* complain that they have not had their day in court (Appellees Brief page 6) These appellees will have their day in court at such time as the case is sent back to the District Court to hear the evidence. The evidence will determine whether or not these appellees conspired with the other appellees in violating the injunction and whether or not they aided or abetted in the violation of the injunction. As previously pointed out, the certificate of contempt of the referee in bankruptcy is presumptively correct. The referee in bankruptcy having been the only tribunal to hear evidence, the contemptuous conduct of these appellees is sustained by the referee's findings.

CONCLUSION.

We respectfully urge that the decision of the lower court, if permitted to stand, would have the effect of crippling the administration of bankruptcy estates by courts of bankruptcy. The decision of the District Court denies to the bankruptcy court the power to enjoin a threatened trespass upon property in its custody.

Furthermore, the decision of the District Court lends judicial approval to an anomalous submission to the

jurisdiction of the court. In other words, the decision of the District Court permits a party litigant to be both in and out of court to his own advantage. Appellees could have refused to have submitted themselves to the jurisdiction of the referee in bankruptcy by not appearing in the proceeding at all. Instead of that they elected to appear, to litigate the question of the court's jurisdiction, to consent to a stipulated order, and to permit such order to become final and binding. The United States Supreme Court has upheld the power of a court of record to determine for itself whether or not it has jurisdiction in a particular case and that determination itself is *res judicada* if permitted to become final. It follows therefore that appellees having permitted the injunctive order of the referee in bankruptcy which overrules appellees' jurisdictional objections to become final, cannot now challenge that order collaterally, after they decide to violate it.

The record reveals that appellees had ample notice of the harm that would be done to appellant's oil well by the use of mud as a circulating medium in the drilling of their own well. This knowledge was brought to them by the experience suffered as a result of the "Termo" well and by the engineering and geological testimony presented before the referee as to the threat to appellant's property involved in appellee's proposed use of mud. To use a colloquialism, the shameless violation of the injunctive order became the "proof of the pudding", in view of the fact that irreparable damage was incurred by appellant's well as a result of such misconduct by appellees.

For which reasons appellant respectfully urges the reversal of the decision of the District Court.

Respectfully submitted,

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By Raphael Dechter,

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